

REMARKS

Claims 1-41 are pending in the present application. By virtue of this response, claims 8, 25, 27, 29-32, and 37 have been amended, no claims are added, and no claims are cancelled. Claims 20-24 were cancelled in a previous response; however, the Examiner has designated claims 20-24 as still pending and withdrawn in the Office Action mailed January 30, 2007, and thus apparently the cancellation of claims 20-24 was not entered. Therefore claims 20-24 are designated as pending but withdrawn in this amendment. However, if those claims should be presented as new claims with the status identifier “new—withdrawn,” Applicants will provide a corrected claim listing. Accordingly, claims 1-19 and 25-41 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim 8 is amended for clarity. Claim 25 is amended to correct a typographical error. Claim 27 is amended to more particularly specify the process described by the claim. Claim 29 is amended to insert the missing Roman numeral “IX.” Claim 29 is also amended to recite a quantity that exceeds 0.1 kg; this amendment is supported at page 11, paragraph 31 of the instant specification. Claims 30 and 31 are amended to correct claim dependencies. Claim 32 is amended to correct a typographical error. Claim 37 is amended for consistency with the claim on which it depends.

No new matter has been added.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 1-19 and 25-41 stand rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that the scope of compounds intended as the metal mesoporphyrin compound is unclear, and that a formula should be consistently presented in the claims.

In response, Applicants submit that the claims are clear and distinct as written. The term “mesoporphyrin” is well-known in the art, and refers to the compounds designated mesoporphyrin I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, and XV. See the attached Exhibit 1 for the

IUPAC definition of the mesoporphyrin compounds.¹ The term “metal” is also well-known in the chemical arts as well; see the attached Exhibit 2.² In view of these well-understood terms, a structural formula is not necessary. Applicants respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. § 112, First Paragraph

Claim 1 stands rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement, in that claim 1 does not contain a generic formula indicating the structural makeup for Applicant’s invention.

In response, Applicants submit that the claim does meet the requirements under 35 USC § 112, first paragraph. As discussed above for the rejection under 35 USC § 112, second paragraph, the terms “mesoporphyrin” and “metal” are well-known to those of skill in the art. Thus, the term “metal mesoporphyrin compound” provides sufficient written description to describe Applicant’s invention to the skilled artisan. Applicants respectfully request withdrawal of this rejection.

Obviousness-type double patenting rejection

Claims 1-19 and 25-41 stand rejected on the ground of nonstatutory double patenting over claims 1-33 of U.S. Patent No. 6,818,763 since the claims, if allowed, allegedly would improperly extend the “right to exclude” already granted in the patent.

In response, Applicants submit a terminal disclaimer over U.S. 6,818,763. Withdrawal of this rejection is respectfully requested.

¹ Exhibit 1 was printed from the World Wide Web page <http://www.chem.qmul.ac.uk/iupac/tetrapyrrole/app2n3.html>, last visited on June 19, 2007.

² Exhibit 2 is from the chemistry textbook Mahan, Bruce H., University Chemistry, 3rd Ed., Menlo Park, CA: Addison Wesley, 1975, pages 572-573.

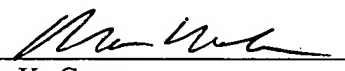
CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 606952000420. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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Enclosures:

Terminal Disclaimer

Exhibit 1: World Wide Web page

<http://www.chem.qmul.ac.uk/iupac/tetrapyrrole/app2n3.html>, last visited on June 19, 2007.

Exhibit 2: Mahan, Bruce H., University Chemistry, 3rd Ed., Menlo Park, CA: Addison Wesley, 1975, pages 572-573.